

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:

Vanity Shop of Grand Forks, Inc.,  
  
Debtor.

Case No.: 17-30112

Chapter 11

**NOTICE OF MOTION FOR RETURN OF GOODS  
PURSUANT TO 11 U.S.C. § 546(H)**

NOTICE IS HEREBY GIVEN that the above referenced Debtor has filed a Motion for Return of Goods Pursuant to 11 U.S.C. § 546(h). A copy of this motion is attached and served upon you.

NOTICE IS FURTHER GIVEN that written objections to said motion, if any shall be filed with the Clerk of the US Bankruptcy Court, Quentin N. Burdick Courthouse, 655 1<sup>st</sup> Avenue North, Suite 201, Fargo, North Dakota 58102-4932 within FOURTEEN (14) days from the date of the mailing of this notice. Any objections not filed and served may be deemed waived.

Dated this 6th day of April, 2017.

**VOGEL LAW FIRM**

BY: /s/ Caren W. Stanley

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*COUNSEL TO DEBTOR IN POSSESSION*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:	Case No.: 17-30112
Vanity Shop of Grand Forks, Inc.,	Chapter 11
Debtor.	

**MOTION FOR RETURN OF GOODS  
PURSUANT TO 11 U.S.C. § 546(H)**

Vanity Shop of Grand Forks, Inc., as Debtor in possession (the “**Debtor**”) in the above-captioned Chapter 11 case submits this Motion (the “**Motion**”), for entry of an order pursuant to 11 U.S.C. § 546(h) and Rule 9014 of the Federal Rules of Bankruptcy Procedure to return certain goods to the seller of the same. In support of this Motion, the Debtor respectfully represents as follows:

**JURISDICTION AND VENUE**

1. The United State Bankruptcy Court for the District of North Dakota (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein is 11 U.S.C. § 546(h). This Motion is filed pursuant to Bankruptcy Rule 9013.

**BACKGROUND INFORMATION**

3. On March 1, 2017 (the “**Petition Date**”), the Debtor commenced a voluntary case under Chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to

operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. Additional factual background relating to the Debtor's business, capital structure and the commencement of this Chapter 11 case is set forth in detail in the *Declaration of Jill Motschenbacher in Support of Chapter 11 Petition and First Day Motions* (the "**First Day Declaration**").

#### **RELIEF REQUESTED**

5. By this Motion, the Debtor seeks entry of an order, pursuant to 11 U.S.C. § 546(h) allowing the Debtor to return certain goods to the seller in order to offset the purchase price of said goods against the claim of the creditor.

#### **BASIS FOR THE RELIEF REQUESTED**

6. Section 546(h) of the Bankruptcy Code provides:

Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

11 U.S.C. § 546

7. The Debtor received various notices from trade creditors seeking reclamation of goods received by the Debtor within 20-days of the Petition Date. The only goods still in the original shipping container at the Debtor's warehouse on the day the reclamation notice

was received by Debtor's counsel were provided by creditor Gypsies and Moondust aka BeBop/Second Generation in the sum of \$2,602.80. A true and correct copy of the notice of reclamation and corresponding invoice is annexed hereto as **Exhibit A**.

8. The creditor has consented to return of the goods and advised it will pay for return shipment.

9. The prior lienholder, Wells Fargo, N.A., has been paid off and no longer has a lien on the goods. Additionally, secured creditor TGC, LP has consented to return of the goods.

10. Return of the goods is in the best interests of the estate as it will reduce the unsecured claim of the creditor and reduce the amount of administrative claims.

11. WHEREFORE, the Debtor respectfully requests that the Court enter an order allowing the Debtor to return the goods valued at \$2,602.80 to Gypsies and Moondust aka BeBop/Second Generation and said creditor must reduce any claim by the same amount.

Dated this 6th day of April, 2017

**VOGEL LAW FIRM**

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**COUNSEL TO DEBTOR IN POSSESSION**

2872087.1



*Rosenthal & Rosenthal*

March 7, 2017

Vanity Shop of Grand Forks, Inc.  
1001 25<sup>th</sup> Street, N.  
Fargo, ND 58102  
Attention: James Bennett

Dear James,

Rosenthal & Rosenthal Inc., on behalf of itself and Gypsies & Moondust., hereby exercises its and its factored client's rights under the Uniform Commercial Code, including, but not limited to, the provisions of section 2-702 of the Uniform Commercial Code and any other provisions of law, including, but not limited to, section 546 (c) of title 11 of the United States Code, and hereby demands reclamation and the immediate return of all merchandise delivered to your company on credits as follows:

<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Amount</u>
651654	2/27/17	\$2,701.80

Very truly yours,  
Rosenthal & Rosenthal, Inc.

Anthony DiTirro  
Senior Vice President

Via: Certified Mail

Cc: Vogel Law Firm  
Attn: Caren W. Stanley  
Attn: Jon R. Brakke

ROSENTHAL & ROSENTHAL, INC.

1370 BROADWAY, NEW YORK, NEW YORK 10018 TEL 212 356-1400 ROSENTHALINC.COM

**EXHIBIT A**

ROSENTHAL & ROSENTHAL INC.

STATEMENT OF ACCOUNT

03/07/17

CUST#: 236336 Vanity Shop of Grand Forks, Inc.  
1001 25th Street, N.  
Fargo, ND 58102  
PH#: (701) 212-1599

Gypsies & Moondust

TRANS	INV NO	INV DT	DUE DT	TERMS	AMOUNT
INV	651654	02/27/17	03/29/17	30	2,701.80

TOTAL DEBITS	2,701.80
TOTAL CREDITS	0.00
CLIENT TOTAL	2,701.80